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8 **BEFORE THE**
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 930-A

13 **MARIUS EUGENE NELSEN**
21801 Stevens Creek Boulevard, Suite 8
Cupertino, CA 95014,

A C C U S A T I O N

14 **Civil Engineer License No. C 20597,**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity
19 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,
20 Department of Consumer Affairs.

21 2. On or about April 26, 1971, the Board for Professional Engineers and Land Surveyors
22 issued Civil Engineer License Number C 20597 to Marius Eugene Nelsen (Respondent). The
23 Civil Engineer License was in full force and effect at all times relevant to the charges brought
24 herein and will expire on September 30, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board for Professional Engineers and Land
27 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.
28 All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 8759 of the Code states:

2 "(a) A licensed land surveyor or registered civil engineer authorized to practice land
3 surveying shall use a written contract when contracting to provide professional services to a client
4 pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or
5 registered civil engineer and the client, or his or her representative, prior to the licensed land
6 surveyor or registered civil engineer commencing work, unless the client knowingly states in
7 writing that work may be commenced before the contract is executed. The written contract shall
8 include, but not be limited to, all of the following:

9 (1) A description of the services to be provided to the client by the licensed land surveyor
10 or registered civil engineer.

11 (2) A description of any basis of compensation applicable to the contract, and the method of
12 payment agreed upon by the parties.

13 (3) The name, address, and license or certificate number of the licensed land surveyor or
14 registered civil engineer, and the name and address of the client.

15 (4) A description of the procedure that the licensed land surveyor or registered civil
16 engineer and the client will use to accommodate additional services.

17 (5) A description of the procedure to be used by any party to terminate the contract.

18 (b) This section shall not apply to any of the following:

19 (1) Professional land surveying services rendered by a licensed land surveyor or registered
20 civil engineer for which the client will not pay compensation.

21 (2) A licensed land surveyor or registered civil engineer who has a current or prior
22 contractual relationship with the client to provide professional services pursuant to this chapter,
23 and that client has paid the surveyor or engineer all of the fees that are due under the contract.

24 (3) If the client knowingly states in writing after full disclosure of this section that a
25 contract which complies with the requirements of this section is not required.

26 (4) Professional services rendered by a licensed land surveyor or a registered civil engineer
27 to any of the following:

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1 (A) A professional engineer licensed or registered under Chapter 7 (commencing with
2 Section 6700).

3 (B) A land surveyor licensed under this chapter.

4 (C) An architect licensed under Chapter 3 (commencing with Section 5500).

5 (D) A contractor licensed under Chapter 9 (commencing with Section 7000).

6 (E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section
7 7800).

8 (F) A manufacturing, mining, public utility, research and development, or other industrial
9 corporation, if the services are provided in connection with or incidental to the products, systems,
10 or services of that corporation or its affiliates.

11 (G) A public agency.

12 (c) "Written contract" as used in this section includes a contract that is in electronic form..

13 5. Section 8762 of the Code states:

14 "(a) Except as provided in subdivision (b), after making a field survey in conformity with
15 the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the
16 county surveyor in the county in which the field survey was made, a record of the survey.

17 (b) Notwithstanding subdivision (a), after making a field survey in conformity with the
18 practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the
19 county surveyor in the county in which the field survey was made a record of the survey relating
20 to land boundaries or property lines, if the field survey discloses any of the following:

21 (1) Material evidence or physical change, which in whole or in part does not appear on any
22 subdivision map, official map, or record of survey previously recorded or properly filed in the
23 office of the county recorder or county surveying department, or map or survey record maintained
24 by the Bureau of Land Management of the United States.

25 (2) A material discrepancy with the information contained in any subdivision map, official
26 map, or record of survey previously recorded or filed in the office of the county recorder or the
27 county surveying department, or any map or survey record maintained by the Bureau of Land
28

1 Management of the United States. For purposes of this subdivision, a “material discrepancy” is
2 limited to a material discrepancy in the position of points or lines, or in dimensions.

3 (3) Evidence that, by reasonable analysis, might result in materially alternate positions of
4 lines or points, shown on any subdivision map, official map, or record of survey previously
5 recorded or filed in the office of the county recorder or the county surveying department, or any
6 map or survey record maintained by the Bureau of Land Management of the United States.

7 (4) The establishment of one or more points or lines not shown on any subdivision map,
8 official map, or record of survey, the positions of which are not ascertainable from an inspection
9 of the subdivision map, official map, or record of survey.

10 (5) The points or lines set during the performance of a field survey of any parcel described
11 in any deed or other instrument of title recorded in the county recorder's office are not shown on
12 any subdivision map, official map, or record of survey.

13 (c) The record of survey required to be filed pursuant to this section shall be filed within 90
14 days after the setting of boundary monuments during the performance of a field survey or within
15 90 days after completion of a field survey, whichever occurs first.

16 (d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for
17 reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day
18 time period shall be extended until the time at which the reasons for delay are eliminated. If the
19 licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or
20 she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter
21 stating that he or she is unable to comply. The letter shall provide an estimate of the date for
22 completion of the record of survey, the reasons for the delay, and a general statement as to the
23 location of the survey, including the assessor's parcel number or numbers.

24 (2) The licensed land surveyor or licensed civil engineer shall not initially be required to
25 provide specific details of the survey. However, if other surveys at the same location are
26 performed by others which may affect or be affected by the survey, the licensed land surveyor or
27 licensed civil engineer shall then provide information requested by the county surveyor without
28 unreasonable delay.

1 (e) Any record of survey filed with the county surveyor shall, after being examined by him
2 or her, be filed with the county recorder.

3 (f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope
4 or postcard with the filing of the record of survey, the county recorder shall return the postage-
5 paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing
6 data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the
7 date, the book or volume, and the page at which the record of survey is filed with the county
8 recorder."

9 6. Section 8780 of the Code states:

10 "The board may receive and investigate complaints against licensed land surveyors and
11 registered civil engineers, and make findings thereon.

12 By a majority vote, the board may reprove, suspend for a period not to exceed two years, or
13 revoke the license or certificate of any licensed land surveyor or registered civil engineer,
14 respectively, licensed under this chapter or registered under the provisions of Chapter 7
15 (commencing with Section 6700), whom it finds to be guilty of:

16 (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

17 (b) Any negligence or incompetence in his or her practice of land surveying.

18 . . .

19 (d) Any violation of any provision of this chapter or of any other law relating to or
20 involving the practice of land surveying.

21 . . .

22 (g) A breach or violation of a contract to provide land surveying services.

23 . . . "

24 7. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove,
25 suspend for a period not to exceed two years, or revoke the certificate of any professional
26 engineer registered under this chapter:

27 . . .

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1 (c) Who has been found guilty by the board of negligence or incompetence in his or her
2 practice.

3 (d) Who has been found guilty by the board of any breach or violation of a contract to
4 provide professional engineering services.

5 . . .

6 "(h) Who violates any provision of this chapter."

7 8. Section 6735 of the Code states:

8 "(a) All civil (including structural and geotechnical) engineering plans, calculations,
9 specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or
10 under the responsible charge of, a licensed civil engineer and shall include his or her name
11 and license number. Interim documents shall include a notation as to the intended purpose
12 of the document, such as "preliminary," "not for construction," "for plan check only," or
13 "for review only." All civil engineering plans and specifications that are permitted or that
14 are to be released for construction shall bear the signature and seal or stamp of the licensee
15 and the date of signing and sealing or stamping. All final civil engineering calculations and
16 reports shall bear the signature and seal or stamp of the licensee, and the date of signing and
17 sealing or stamping. If civil engineering plans are required to be signed and sealed or
18 stamped and have multiple sheets, the signature, seal or stamp, and date of signing and
19 sealing or stamping shall appear on each sheet of the plans. If civil engineering
20 specifications, calculations, and reports are required to be signed and sealed or stamped and
21 have multiple pages, the signature, seal or stamp, and date of signing and sealing or
22 stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

23 . . . "

24 9. Section 6749 of the Code states:

25 "(a) A professional engineer shall use a written contract when contracting to provide
26 professional engineering services to a client pursuant to this chapter. The written contract
27 shall be executed by the professional engineer and the client, or his or her representative,
28 prior to the professional engineer commencing work, unless the client knowingly states in

1 writing that work may be commenced before the contract is executed. The written contract
2 shall include, but not be limited to, all of the following:

3 (1) A description of the services to be provided to the client by the professional engineer.

4 (2) A description of any basis of compensation applicable to the contract, and the method of
5 payment agreed upon by the parties.

6 (3) The name, address, and license or certificate number of the professional engineer, and
7 the name and address of the client.

8 (4) A description of the procedure that the professional engineer and the client will use to
9 accommodate additional services.

10 (5) A description of the procedure to be used by any party to terminate the contract.

11 . . . "

12 10. Section 125.3 of the Code provides, in pertinent part, that the board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case.

16 **SHAFER PROJECT**

17 11. On or about February 22, 2006, Robert Shaffer hired Nelson Engineering, Marius E.
18 Nelson (Respondent), President, to perform land surveying services at property identified as
19 20425 Iron Springs Road, Los Gatos, California (hereinafter "Shafer project"). Respondent's
20 proposal included the following services:

21 a. Obtain field data to prepare a topographic map of the future leaching area (including
22 the middle parking pad) at the subject property.

23 b. Obtain field data to prepare a topographic map of the upper building site at the
24 subject property.

25 c. Obtain field data to verify the locations of the iron pipes at the property corners at the
26 subject property.

27 In March, June and September 2006, Respondent prepared the Maps entitled Lands of
28 Shafer, APN 544-34-033, County of Santa Clara, California (hereinafter "Shafer Maps") based on

1 field surveys that were performed in March, June and September 2006. The Shafer Maps depict
2 the parcel and topographic data located in the field. The Shafer Maps also show control points,
3 the benchmark, bearings and distances on the boundary lines, monuments and notes regarding the
4 relationship of the boundary lines and corners to the found monuments with a tie to the
5 monuments by bearing and distance from the property corners. The boundary lines appeared to
6 have been based on the Record of Survey and Corner Record dated June 2002, but there was no
7 indication of these documents on the Shafer Maps.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Incompetence and Negligence)

10 12. Respondent is subject to disciplinary action under section 8780(b) in that Respondent
11 failed to depict and annotate the record and non-record monument data found in the field, and
12 based on the Record of Survey and Corner Record, on the Shafer Maps. Respondent should have
13 shown the basis of establishment of the boundary lines on the Shafer Maps. This information is
14 also necessary if questions arise regarding the survey of the boundary lines shown on the Shafer
15 Maps. Failure to provide this information demonstrates incompetence and/or negligence in the
16 practice of land surveying.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Incompetence and Negligence)

19 13. Respondent is subject to disciplinary action under section 8780(b) in that Respondent
20 failed to prepare and file a Record of Survey as required by section 8762(b)(5). The boundary
21 lines and monuments established and shown on the Shafer Maps required preparing and filing a
22 Record of Survey since the parcel is described in a deed and is not shown on a map of record and
23 material discrepancies exist with the information contained in the record deed and the information
24 shown on the Shafer Maps. This conduct demonstrates incompetence and/or negligence in the
25 practice of land surveying.

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1 prepare improvement plans for the Cox Parcels. Later Mr. Cox and Respondent verbally agreed
2 that Respondent would prepare a Parcel Map for the Cox Parcels.

3 Respondent prepared a number of maps and improvement plans, including the following:
4 (1) A Lot Line Adjustment Parcel Map prepared in December 2006 which dealt with four of the
5 six Cox Parcels; (2) a draft Parcel Map prepared on or about September 11, 2007; and (3) a draft
6 improvement plan prepared September 27, 2007, which involved all six of the Cox Parcels.

7 **SIXTH CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct)

9 18. Respondent is subject to disciplinary action under section 6775(h), in that Respondent
10 failed to comply with sections 6749(a)(5) in that Respondent's contract with Mr. Cox dated
11 January 15, 2006, failed to describe the procedure to be used by the parties to terminate the
12 contract.

13 **SEVENTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 19. Respondent is subject to disciplinary action under section 6775(h), in that Respondent
16 failed to comply with sections 6735(a) in that Respondent's draft improvement plan prepared
17 September 27, 2007, failed to contain Respondent's Registered Civil Engineer (RCE) license
18 number as required.

19 **EIGHTH CAUSE FOR DISCIPLINE**

20 (Negligence)

21 20. Respondent is subject to disciplinary action under section 8780(c) in that Respondent
22 did not use the care ordinarily exercised in like cases by duly licensed professional engineers in
23 the practice of land surveying as follows:

24 a. Respondent's Lot Line Adjustment Parcel Map prepared in December 2006 failed to
25 analytically resolve boundary discrepancies. Respondent's boundary solution relied exclusively
26 upon two found centerline monuments in Paloma Drive. Iron pins stamped RCE 13173
27 ("Mulberg Pins") were called off by 1.9 feet. Respondent failed to locate any additional control,
28 failed to conduct a thorough office and field search for record monuments for adjoining parcels

1 and failed to incorporate any resulting information into his boundary resolutions for the Cox
2 Parcels and related easements.

3 **NINTH CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct)

5 21. Respondent is subject to disciplinary action under section 6775(d) and/or section
6 8780(g), in that Respondent breached his verbal contract with Mr. Cox to prepare a Parcel Map.
7 Respondent failed to complete and deliver this work product to Mr. Cox.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a
11 decision:

12 1. Revoking or suspending Civil Engineer License Number C 20597, issued to Marius
13 Eugene Nelsen;

14 2. Ordering Marius Eugene Nelsen to pay the Board for Professional Engineers and
15 Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to
16 Business and Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.
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21 DATED: Sept 9, 2010

Original Signed

22 DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

Complainant

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